

Serial. No. 10/734,744
Response dated January 6, 2006
Reply to Office action of October 6, 2005

Remarks

Claims 9, 11, 16-19, 30, and 33-51 are pending in this application.

Applicant first wants to thank the Examiner for allowing claims 16-19, 30, 33, 34, and 37-51.

Claims 9 and 35 have been amended.

For reasons stated below, Applicant respectfully submits that the currently pending claims 9, 11, 35, and 36 are also in condition for allowance.

35 U.S.C. § 112 ¶ 1 (Written Description)

Claims 9, 11, and 36 are rejected under 35 U.S.C. § 112, ¶ 1, as failing to comply with the written description requirement. The Examiner found that these claims contained subject matter that was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. See § 2163.02 MPEP.

Claim 9 has been amended to delete the alkali metal salts recited in the claims. Claim 36, as it was previously presented, does not recite any alkali metal salt. Both claims require that "the total concentration of said components in said antifreeze ranges from 10 to 55 wt %." The written description of the invention as originally filed fully supports this limitation and shows that the inventor, at the time the application was filed, had possession of the invention of claims 9, 11, and 36.

Paragraph 20 of the specification as originally filed teaches (emphasis added),

The concentration of the of the active agent or combination of the active agents in the antifreeze compositions of the present invention ranges from 10 to 55 wt. %, such as from 30 to 50 wt. %, and such as from 30 to 45 wt. % and further such as from 20 to 40 wt. %. If the antifreeze, deicing, or freeze control composition is a combination of at least two of the active agents, the total concentration of alkali metal salts in said antifreeze, deicing, or freeze control compositions ranges from 30 to 45 wt. %.

The term "combination of the active agents" used in the first sentence quoted above conveys to one skilled in the relevant art that the antifreeze can comprise two or more of the active agents, and the total concentration of the two or more of the active agents in the antifreeze can ranges from 10 to 55 wt. %, which is the range claimed in claims 9 and 36 of the present application.

Serial. No. 10/734,744
Response dated January 6, 2006
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One skilled in the relevant art will understand that the combination of the active agents does not have to include any alkali metal salt. For example, it may only include two or more alkaline earth metal salts as those taught in paragraphs 17 and 19 of the present application. The second sentence quoted above (which is also quoted in the Office action by the Examiner) conveys to one skilled in the art that if the antifreeze is a combination of at least two of the active agents and when there are alkali metal salts in the antifreeze, the total concentration of alkali metal salts ranges from 30 to 45 wt. %. But this second sentence does not require that when a combination of the active agents is used, the combination shall always include alkali metal salts or the total concentration of all active agents shall always range from 30 to 45 wt. %, because otherwise the teaching of the first sentence quoted above will be vitiated and become meaningless.

The antifreeze of claim 9 or 36 must contain calcium nitrate and magnesium nitrate, but it may or may not contain any alkali metal salt as the components recited in the claims. When the antifreeze of claim 9 or 36 does not contain any alkali metal salt, the inventor has described in the specification in such a way as to reasonably convey to one skilled in the art that the total concentration of the active agent components in the antifreeze can range from 10 to 55 wt. %. Even if there are alkali metal salts in the antifreeze, it is reasonably conveyed by the inventor in the specification that the total concentration of the active agent components recited in the claims can still range from 10 to 55 wt. %, while the total concentration of alkali metal salts in the antifreeze ranges from 30 to 45 wt. %. The 10 to 55 wt. % range recited in the claim and the 30 to 45 wt. % range taught in the specification do not conflict with each other.

For the same reasons as to claim 9, the amount recited in claim 11—30 to 55 wt. %—is correct, is within the range of 10 to 55 wt. % of its base claim, and does not conflict with the 30 to 45 wt. % range taught in the specification for the total concentration of alkali metal salts.

Therefore, Applicant respectfully requests the Examiner to withdraw the rejection of claims 9, 11, and 36 under the written description requirement of 35 U.S.C. § 112, ¶ 1.

35 U.S.C. § 112, ¶ 2 (Indefiniteness)

Claim 35 is rejected under 35 U.S.C. § 112, ¶ 2, as being indefinite. More specifically, the Examiner found that the claim was confusing as it referred to the diethylene glycol component as a salt.

Serial. No. 10/734,744
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Claim 35 has been amended to change the word "salt" to "components." Applicant respectfully submits that this rejection has become moot, and the claim has now met the requirement of 35 U.S.C. § 112, ¶ 2.

Serial. No. 10/734,744
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Conclusion


In view of the above amendments and remarks, the Examiner is respectfully requested to prepare a Notice of Allowability allowing all the pending claims (9, 11, 16-19, 30 and 33-51).

The Commissioner is authorized to charge any required fees or credit overpayment to the deposit account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

Respectfully submitted,

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